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A $3.5 million insider trading case with Surfside, Rite Aid, designer shoes and weed

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By

A Surfside-based member of one of America's richest families, one that runs Designer Brands, American Eagle and is connected to Albertsons stores, participated in an insider trading scheme that brought in at least $3.5 million.

But while David Schottenstein admitted to conspiracy to commit securities fraud with Thursday's guilty plea in Boston federal court, attorneys for two others facing the same charge as well as aiding and abetting securities fraud say they're fighting.

James Froccaro, representing Surfside's Kris Bortnovsky, emailed that his client "is innocent of the allegations contained in the Indictment and will be pleading NOT GUILTY!"

Martin Weinberg, attorney for Bay Harbor Islands' Ryan Shapiro emailed that his client "is a highly regarded Miami-based entrepreneur and philanthropist. He is fully intending to mount a vigorous defense which will demonstrate his factual as well as legal innocence of the allegations at issue in the Boston case."

On the civil side, the Securities and Exchange Commission filed a complaint against Schottenstein, Bortnovsky, Shapiro, and Bortnovsky companies Sakal Capital Management and Sakal U.S. Fund.

The SEC says Bortnovsky, using tips from Schottenstein that the latter picked up from family members, made $4 million on insider trades involving the 2018 proposed merger of Albertsons and Rite-Aid that was called off and a takeover of a Canadian cannabis company. Using inside knowledge, the SEC says, allowed Shapiro to profit $121,000 on these deals.

According to Schottenstein's guilty plea and the federal court sentencing chart, the U.S. Attorney is recommending a prison sentence on the low end of a range from 46 months to 57 months. The prosecutors also are recommending restitution to be determined by the court, $634,893 in forfeiture and a year of supervised release after Schottenstein finishes his prison time.

"I take full and sole responsibility for my conduct and deeply regret my actions," David Schottenstein said in a statement emailed to the Miami Herald by his lawyer, Eric Rosen. "I apologize to my family, friends and colleagues."

DSW and 'crushing it'

"Family affairs" can be a synonym for "financial affairs" for the Schottenstein family, once ranked by Forbes among the 100 richest in the nation. The Schottensteins have spilled their own blood, legally, over money.

Bal Harbour resident Beverley Schottenstein, 95, is still in Miami federal court trying to settle how much money she's going to get from J.P. Morgan Securities and grandsons Evan Schottenstein and Avi Schottenstein after a Financial Industry Regulatory Authority panel ruled that they owed her almost $19 million for unauthorized trades on her account.

Since 2005, Jay Schottenstein has been the executive chairman of Designer Brands, known as shoe company DSW back in 2017. He's also been on the board of Albertsons since 2006. Jay Schottenstein is referred to in the SEC complaint as "Insider 2" and in the criminal charging documents as "Individual 2."

Miami Beach-based Joey Schottenstein, son of Jay, has been a DSW/Designer Brands board member, and, for nine months of 2018, on the board of Green Growth Brands (GGB). GGB is described in court documents as "a retailer of cannabis-related products." Joey Schottenstein is referred to in the SEC complaint as "Insider 1" and in the criminal charging documents as "Individual 1."

The SEC complaint says Jay Schottenstein is David Schottenstein's uncle. But a representative of Joey and Jay Schottenstein says Joey is a second cousin to David, not a first cousin.

The scheme as described in David Schottenstein's charging documents began with David calling cousin Joey to ask how DSW was doing and Joe telling David that DSW was "crushing it."

So informed, David Schottenstein bought DSW shares and call option contracts on Aug. 15, 2017. The same day, prosecutors say, David fed that information to Bortnovsky and Bortnovsky caused the Sakal U.S. Fund to buy 35,000 DSW shares. The charging documents claim David Schottenstein and Bortnovsky then traded messages that day to cover themselves.

David Schottenstein:"To be clear and for the records, I don't have any special insight or info or anything like that. Just a feeling."

Bortnovsky: “I didn’t think anything different.”

Three days later, the charging documents say, David Schottenstein bought more DSW shares and call options and Bortnovsky had Sakal U.S. Fund buy $2 million of DSW shares. After DSW announced “strong quarterly financial results for the second quarter of 2017,” the documents say, Schottenstein, Bortnovsky, Sakal Capital Management and Sakal U.S. Fund sold all the DSW shares and securities in their personal and business accounts.

Money from the Albertsons-Rite Aid Merger That Wasn’t?

David Schottenstein’s charging documents say on Aug. 31 he bought 99,000 shares of Rite Aid after Joey Schottenstein told him that Albertsons was planning to buy Rite Aid.

From Sept. 15, 2017 through Feb. 20, 2018, the charging documents say, David Schottenstein kept mining Joey Schottenstein for information about the coming Rite Aid acquisition that he’d pass along to Bortnovsky and Shapiro. They also talked about how this would help Kimco, a partial owner of Albertsons.

Valentine’s Day, 2018, Schottenstein sent Bortnovsky a message that he’d bought some Kimco shares and, the documents say, Bortnovsky had Sakal US Find buy about 250,000 shares of Rite Aid. A Shapiro-controlled trust account bought “tens of thousands” of Rite Aid shares, the court documents say, and more than 6,500 shares of Kimco.

The Wall Street Journal reported on Feb. 20, 2018, that Albertsons planned to buy Rite Aid. Court documents say Shapiro messaged David Schottenstein, “Did you see the beautiful headline in the wsj?”

The Street reported that Rite Aid stock jumped 7.5% at the start of trading in New York, then ended the day up 3.2%. The charging documents say David Schottenstein and Shapiro sold tens of thousands of Rite Aid shares that day.

Illegally grazing in the grass for green?

The charging documents say David Schottenstein learned of one more deal from cousin Joey Schottenstein, “pursuant to their relationship of trust and confidence:” Green Growth Brands (GGB) was going to make a hostile takeover bid for Aphria, a Canadian company that produced cannabis products.

After David Schottenstein told Shapiro and Bortnovsky on Dec. 18, the charging documents say, they bought Ahphria securities, as David Schottenstein had done four days earlier. And GGB announced its hostile takeover bid on Dec. 27, 2018.

But Aphria rejected the bid on Dec. 28, 2018. David Schottenstein learned from cousin Joe that GGB wouldn't be raising its bid. The charging documents say David Schottenstein told Shapiro "sit tight. Don't do anything" and told Bortnovsky that GGB probably would have to increase its offer and that others might start a bidding fight.

Bortnovsky allegedly unloaded thousands of Aphria securities through Sakal US Fund for $900,000 on Dec. 28. On Jan. 10, 2019, David Schottenstein told Shapiro "sell u know what pls" as he dumped 75,000 personally held shares of Aphria. By the time Bortnovsky finished selling his shares and call options, prosecutors say his processes were $4.6 million.

The charging documents say Shapiro forwarded an email to David Schottenstein showing he'd had gains of $175,000 in Aphira and another trade allegedly made with inside information, but took a $120,000 hit on another buy that David Schottenstein suggested without inside information.

"Schottenstein responded by requesting that Shapiro donate, on Schottenstein's behalf, Schottenstein's half of the net profits from Shapiro's trading based on Schottenstein's tips to the synagogue that Schottenstein and Shapiro attended," the court documents say, "and noted that Shapiro would thereby "get the deduction."'

This story has been updated to reflect the family's description of the relationship of Joey Schottenstein and Jay Schottenstein to David Schottenstein.

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Since 1989, David J. Neal's domain at the Miami Herald has expanded to include writing about Panthers (NHL and FIU), Dolphins, old school animation, food safety, fraud, naughty lawyers, bad doctors and all manner of breaking news. He drinks coladas whole. He does not work Indianapolis 500 Race Day.